

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ING LIFE INSURANCE AND ANNUITY)
COMPANY,)
)
Plaintiff)
)
v.)
)
KUMBIRAI CHIWARA USHE,)
)
FIDES PERDITA USHE AS MOTHER)
AND NATURAL GUARDIAN OF)
KUMBIRAI CHIWARA USHE,)
)
ZVIDZAI G. USHE,)
)
DUMAZILE Z. USHE,)
)
NTOMBIZODWA KUMALO-USHE)
(LAST SPOUSE OF SAMSON CHIWARA)
USHE), individually and as Administratrix)
of the ESTATE OF SAMSON CHIWARA)
USHE,)
Defendant)

CIVIL ACTION NO. 04 CV 11571-KPN GAO

MOTION FOR ORDER TO DISBURSE FUNDS TO FIDES PERDITA USHE,
MOTHER AND COURT APPOINTED GUARDIAN OF KUMBIRAI CHIWARA USHE

Pursuant to Local Rules 67.2 and 67.3, Defendant, Fides Perdita Ushe, hereby moves the Court for an Order directing the Clerk of Court to disburse from the court's registry funds related to this matter in the amount of one-third of the remaining funds after disbursement from said funds to Plaintiff, ING Life Insurance and Annuity Company for their reasonable attorney's fees and costs incurred in prosecuting this action in accordance with a Release and Stipulation Judgment of the parties filed on or about January 18, 2006 by Melicent B. Thompson, counsel for ING. In support thereof, Fides Perdita Ushe shows the Court the following:


The funds at issue in the interpleader are the proceeds of an annuity account which the deceased, Samson Chiwara Ushe, had at ING under the account number G50000374 069447399 (the "Account") dating back to 1984. According to ING's records, interpleader defendants Kumbirai, Zvidzai and Dumazile Ushe were designated as the beneficiaries of the Account in the event of Samson's death. All the parties agree that there is no dispute that Kumbirai Ushe is entitled to at least one-third of the funds. ING deposited the Account proceeds

into the Court registry and requested that it be held in an interest-bearing account. On or about January 13, 2006, the parties executed a Release and Stipulated Judgment in which they agreed, *inter alia*, that within ten (10) days of filing the fully-executed Release and Stipulated Judgment with the Court, ING would move the Court to disburse the from the Account proceeds currently being held in the court's registry, an amount equal to ING's fair and reasonable attorneys' fees and expense in prosecuting this interpleader action, and to distribute to Fides Perdita Ushe as mother and court appointed guardian of Kumbirai Chiwara Ushe an amount equal to one-third of the balance of said funds after payment of said attorneys' fees and expenses. The executed Release and Stipulated Judgment were filed with the Court on or about January 18, 2006. The instant Motion is in accordance with paragraph four of that Release and Stipulated Judgment, and Fides Perdita Ushe has attached hereto a proposed Order regarding disbursement of funds to her as mother and court appointed guardian of Kumbirai Chiwara Ushe, a minor.

WHEREFORE, Defendant, Fides Perdita Ushe, as mother and natural guardian of Kumbirai Chiwara Ushe, respectfully requests that the Court Order disbursement to said Fides Perdita Ushe a sum equal to one-third of the amount remaining in the account after payment of ING's legal fees and expenses.

Date: 1/20/06

Fides Perdita Ushe, Mother and
Guardian of Kumbirai Chiwara Ushe,
By Her Attorney

By: 
Joseph M. Lavinski, Esquire
BBO# 288680
935 Main Street, Suite 203
Springfield, MA 01103
Phone (413) 739-9762
Fax (413) 739-9121

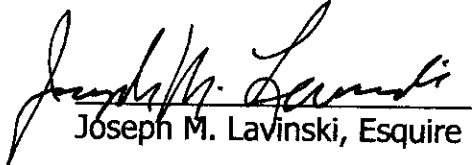
CERTIFICATE OF SERVICE

I, Joseph M. Lavinski, attorney for the defendant, Fides Perdita Ushe, Mother and Guardian of Kumbirai Chiwara Ushe, hereby certify that I have on this date mailed a copy of the foregoing document to all interested parties as follows:

Jane E. Crosby, Esquire, 20 Maple Street, Springfield, MA 01103, Counsel to Ntombizodwa-Ushe, Individually and as Administratrix of the Estate of Samson Chiwara Ushe, and Zvidzai Ushe and Dumazile Z. Ushe.

Melicent B. Thompson, Esquire, Litchfield Cavo, LLP, 40 Tower Lane, Suite 200, Avon, CT 01940, counsel for ING Life Insurance & Annuity Company

Date: 1/20/2006


Joseph M. Lavinski, Esquire

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ING LIFE INSURANCE AND ANNUITY)
COMPANY,)
Plaintiff)
v.)
KUMBIRAI CHIWARA USHE,)
FIDES PERDITA USHE AS MOTHER)
AND NATURAL GUARDIAN OF)
KUMBIRAI CHIWARA USHE,)
ZVIDZAI G. USHE,)
DUMAZILE Z. USHE,)
NTOMBIZODWA KUMALO-USHE)
(LAST SPOUSE OF SAMSON CHIWARA)
USHE), individually and as Administratrix)
of the ESTATE OF SAMSON CHIWARA)
USHE,)
Defendant)

CIVIL ACTION NO. 04 CV 11571 ^{KPN} GAO

ORDER

Having heard the Motion For Order to Disburse Registry Funds, it is hereby
ORDERED:

The Clerk of the Court shall disburse from the court's registry funds related to the above-captioned matter within five (5) days of the date of this Order, a sum representing one-third of the amount in said fund after payment to ING Life Insurance and Annuity Company for their fair and reasonable attorney's fees and costs related to prosecuting this interpleader action.

The check disbursing said funds shall be made payable to Fides Perdita Ushe, as Guardian of Kumbirai Chiwara Ushe, and sent or released to her attorney, Joseph M. Lavinski, 935 Main Street, Suite 203, Springfield, MA 01103.

It is so ORDERED and ADJUDGED this _____ day of _____, 2006.

Magistrate Judge Kenneth P. Neiman
U.S. District Court Magistrate Judge
for the District of Massachusetts